

In The  
SUPREME COURT OF THE UNITED STATES

October Term, 1983

Case No. 83-977

LOUIE L. WAINWRIGHT, Secretary  
Department of Corrections  
State of Florida

Petitioner,

vs.

JOHN HUDGINS,  
#045861

Respondent.

PETITION FOR WRIT OF CERTIORARI  
TO THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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SUPPLEMENTAL BRIEF OF PETITIONER  
FILED PURSUANT TO  
SUPREME COURT RULE 22.6

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QUESTIONS PRESENTED FOR REVIEW

1. Whether the decision below conflicts with decisions of this Court requiring the exhaustion of state judicial remedies.

2. Whether the federal constitutional standard to establish double jeopardy in violation of the Fifth Amendment is similar to Florida's "single transaction rule", so as to permit the district court to consider the respondent's claim as one involving double jeopardy.

3. Whether respondent's dual sentence for aggravated battery and for possession of a firearm while engaged in a criminal offense violates the Fifth Amendment prohibition against double jeopardy.

4. Whether the decision below conflicts with decisions of this Court which hold that challenges to the state court's application of its own laws or rules does not state a basis for federal habeas corpus relief.

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PRELIMINARY STATEMENT

Petitioner files this Supplemental  
Brief pursuant to Supreme Court Rule  
22.6 for the purpose of calling  
attention to a new case decided by this

Court on January 23, 1984: Pulley v.  
Harris, Case No. 82-1095.

ARGUMENT

The decision of the Eleventh Circuit Court of Appeals, in the instant case, is in direct conflict with point four of the questions presented for review, which states:

4. Whether the decision below conflicts with decisions of this Court which hold that challenges to the state court's application of its own laws or rules does not state a basis for federal habeas corpus relief.

Most recently, in Pulley v. Harris, supra, this Court held that "[a] federal court may not issue the writ on the basis of a perceived error of state law." Harris relied on a line of state cases for the proposition that proportionality review should have been extended to him as a matter of state law.



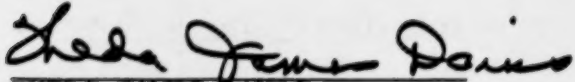
Respondent herein sought federal habeas corpus relief pressing the claim that separate sentences for aggravated battery and possession of a firearm during the commission of a felony violates Florida's single transaction rule set forth in Johnson v. State, 366 So.2d 418 (Fla. 1978). The district court granted the writ although it acknowledged that respondent had raised his claim as a question of state law. The court said:

Although the Petitioner in the instant case, has raised his claim under state and not federal constitutional law, the federal constitutional standard to establish double jeopardy in violation of the Fifth Amendment is similar to the state's "single transaction rule" so as to permit this Court to consider the petitioner's claim as one involving double jeopardy. (A 24-25)

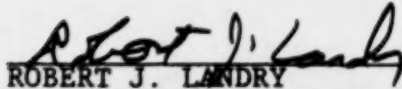
The decision of the district court, affirmed by the Eleventh Circuit Court of Appeals without opinion, is in clear conflict with Pulley v. Harris.

Respectfully submitted,

JIM SMITH  
ATTORNEY GENERAL



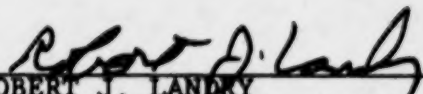
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CERTIFICATE OF SERVICE

I, Robert J. Landry, Counsel for  
Petitioner, and a member of the Bar of  
the United States, hereby certify that  
on the 12<sup>th</sup> day of March, 1984, I  
served three copies of the Supplemental  
Brief of Petitioner Filed Pursuant to  
Supreme Court Rule 22.(6) on Joseph H.  
Serota, Esquire, P. O. Box 140800,  
2401 Douglas Road, Miami, Florida 33134,  
by a duly addressed envelope with  
postage prepaid.

  
\_\_\_\_\_  
ROBERT J. LANDRY  
Assistant Attorney General